

Cliff Sanderlin & Heather Marks
10522 235th PI SW, Edmonds, WA 98020
Clifheat@drizzle.com

RECEIVED
APR 27 2012
DEVELOPMENT SERVICES

April 27, 2012

Edmonds City Council
Edmonds, WA

RE: ARGUMENTS WITH DOCUMENTATION REGARDING APPEAL OF
PLANNED RESIDENTIAL DEVELOPMENT OF BURNSTEAD CONSTRUCTION
COMPANY WOODWAY ELEMENTARY PLAT/PRD, P-2007-17/PRD-2007-18.

1. Name/Address/Phone: Cliff Sanderlin and Heather Marks, 10522 235th PI SW, Edmonds, WA 98020-5732. 206-546-8983; 206-409-3255 (cell)

2. Basis for Standing: We are parties of record in this case. We testified at the hearing examiner hearing on February 9, 2012 and, previously, in 2007. We submitted materials for the February 9, 2012 hearing. We live near the subject property and will be subject to adverse impacts and harms should the PRD be approved.

3. Identify the application: The application that is the subject of this appeal is the plat/PRD proposed by Burnstead Construction with file numbers P-2007-17, PRD-2007-18. We also challenge the SEPA DNS as we did previously, in 2007.

4. With reference to P-2007-17, PRD-2007-18, the City of Edmonds and its Hearing Examiners in 2007 and 2012 were in error.

In 2007 and again in 2012 we testified that **the applicant's wildlife biologist ignored the existence of environmentally critical areas pertaining to the subject property**. The biologist's erroneous information and interpretations were used as a basis for the decision of the 2007 Hearing Examiner. The 2012 Hearing Examiner compounded those errors.

The professional **biologist's wildlife report was based on an evaluation of the wrong property**, with very different characteristics from the applicant's property. From page 4 of the report: "*Habitat 2: Medium-aged mixed forest: This habitat unit occurs along the northern edge.... Vegetation is characterized by a canopy of primarily western red cedar ...and red alder ... with an understory of salal...and sword fern...Wildlife detected in this zone includes song sparrow and dark-eyed junco...*

OUR COMMENT: *The biologist observed the wrong area--as was pointed out in the hearings of 2007, an error that he acknowledged during that hearing. The western red cedar, red alder and salal described are located on property owned by Edmonds and is now part of Hickman Park. This area is habitat for a resident pair of pileated woodpeckers.*

The biologist's wildlife report also stated: "The on-site forested habitat connects to some additional forested lands off-site. Because the width of this area of forest is so narrow, it is unlikely that it serves as a wildlife travel corridor for many wildlife species..."

OUR COMMENT: *It IS a wildlife corridor. Even fencerows are being restored because they are wildlife corridors.*

Also, in reference to this erroneous interpretation in the wildlife study, Paul S. Anderson, Wetland Specialist for the Washington State Department of Ecology commented "**...the wildlife study concludes that the forest stand on this site is too narrow to serve as a wildlife corridor for many wildlife species. Narrow though the forest stand may be, it is still providing habitat connectivity and meets the FWHCA definition under Edmonds Municipal Code §23.90.010.A.10.**" (See our Exhibit 2.)

As documentation, we are attaching the wildlife biologist's report with our annotations. We ask that you add it as Exhibit 3 to the two exhibits previously submitted.

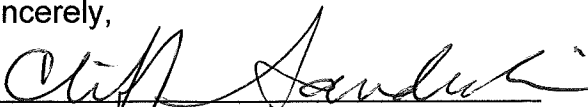
In addition, we are attaching a document that Heather delivered to the Edmonds Hearing Examiner on Aug. 31, 2007 in which she explained the significance of the environmental critical area. In our February 9, 2012 comments she mentioned the existence of this document. Please add as our Exhibit 4:


**Remand Hearing for Old Woodway Elementary PRD by Burnstead Construction
Documentation of Fish & Wildlife Habitat Conservation Area protection
Edmonds, WA, Aug. 31, 2007, Submitted by Heather Marks, MSW**

While these documents likely exist in the archives, we believe they bear close scrutiny.

After studying the details, we believe you will agree that it is in the best interest of the people of Edmonds if this proposed PRD is denied. Thank you again for taking time and effort to consider this important issue.

Sincerely,


Cliff Sanderlin


Heather Marks

Date: 4/27/12

Exhibits 3 & 4 for May 15, 2012 Appeal to Edmonds City Council follow as separate documents

Exhibit 3: WILDLIFE STUDY, BURNSTEAD – WOODWAY ELEMENTARY, WETLAND RESOURCES, INC. PROJECT #06547, Annotated by Heather Marks

**Exhibit 4. *Remand Hearing for Old Woodway Elementary PRD by Burnstead Construction*
Documentation of Fish & Wildlife Habitat Conservation Area protection
Edmonds, WA, Aug. 31, 2007, Submitted by Heather Marks, MSW**



Delineation / Mitigation / Restoration / Habitat Creation / Permit Assistance

9505 19th Avenue S.E.
Suite 106
Everett, Washington 98208
(425) 337-3174
Fax (425) 337-3045

WILDLIFE STUDY

BURNSTEAD - WOODWAY ELEMENTARY

WETLAND RESOURCES, INC. PROJECT #06547

Prepared By:

Wetland Resources, Inc.
9505 19th Avenue SE, Suite 106
Everett, WA 98208
(425) 337-3174

For:

Burnstead Construction
Attn: Tiffany Brown
1215 120th Ave NE, # 201
Bellevue, WA 98005-2135

July 2, 2007

EXHIBIT
4

SITE DESCRIPTION

The subject property is approximately 11 acres located at 23708 104th Avenue W in the City of Edmonds, WA. The investigation area is further located in a portion of Section 36, Township 27N, Range 3E, W.M. This site is comprised of a soccer field and a baseball field with a small strip of forest along the northern border. Surrounding land use is comprised of existing residential development, as well as an abandoned school adjacent to the eastern property line. The applicant is proposing a multi-lot residential development.

WILDLIFE STUDY

Methodology

A site investigation consisting of habitat assessment, point counts, and transects was conducted to determine actual and potential wildlife usage including the presence of priority wildlife species and habitats. Visual and aural point counts were carried out at two locations representative of the two different habitat units identified on site. Data was collected for 40 minutes at each point count station while standing quietly. East-west and north-south transect surveys were completed in which habitat types were evaluated for signs of past and current wildlife markings and activity, including but not limited to nests, feeding sign, tree markings, scat, and tracks. Priority Habitat and Species (PHS) maps from the Washington Department of Fish and Wildlife (WDFW) were also reviewed for any endangered, threatened, or sensitive species located on or near the project site.

Results

No endangered, threatened, or sensitive wildlife species were indicated for the subject property or its surrounding areas within a half-mile radius according to the WDFW PHS maps. During the site investigation two habitat units were identified on-site including an abandoned field and a medium-aged mixed forest. Wildlife species typical of urban/suburban areas were detected in each of the habitat types.

Habitat 1: Abandoned field: This habitat unit is highly disturbed due to its former use as a soccer and baseball field. This area was likely graded and planted with invasive grasses. This habitat unit covers the majority of the site. The vegetation in this zone is primarily comprised of cat's ear (*Hypochaeris radicata*), narrowleaf plantain (*Plantago lanceolata*), red clover (*Trifolium pratense*), white clover (*Trifolium repens*), pineapple weed (*Matricaria discoidea*), and typical lawn grasses. Wildlife species detected in this habitat include American crow (*Corvus brachyrhynchos*), sharp-shinned hawk (*Accipiter striatus*), and tree swallow (*Tachycineta bicolor*). This zone has low functions and values for wildlife due to its high disturbance, lack of structural diversity, and presence of non-native invasive plants.

☐ Number: 1 Author: Heather Subject: Rectangle Date: 4/27/12 12:28:06 PM

40 minutes at two points (one of them on the wrong property) is not sufficient to adhere to professional standards.

Habitat 2: Medium-aged mixed forest: This habitat unit occurs along the northern edge of the subject property adjacent to a residential neighborhood. Vegetation is characterized by a canopy of primarily western red cedar (*Thuja plicata*) and red alder (*Alnus rubra*) with an understory of salal (*Gaultheria shallon*) and sword fern (*Polystichum munitum*). Wildlife detected in this zone includes song sparrow (*Melospiza melodia*), dark-eyed junco (*Junco hyemalis*), spotted towhee (*Pipilo maculatus*), house finch (*Carpodacus mexicanus*), red-breasted sapsucker (*Syphrapicus rubra*), and eastern gray squirrel (*Sciurus carolinensis*). The functions and values for wildlife in this habitat are moderate as the habitat area is small, there is moderate structural diversity, and the zone contains invasive vegetation.

Discussion

Overall this site has low functions and values as wildlife habitat due to the heavy use as a sports field, the surrounding dense suburban development, and lack of species diversity. Some passerine bird species may nest in the forested portion along the northern edge of the site, while others may utilize this area for foraging. The on-site forested habitat connects to some additional forested lands off-site. Because the width of this area of forest is so narrow, it is unlikely that it serves as a wildlife travel corridor for many wildlife species. The development proposal includes maintaining the forested habitat on site.

Additional wildlife species expected to use this site include American robin (*Turdus migratorius*), black-capped chickadee (*Parus atricapillus*), winter wren (*Troglodytes troglodytes*), hairy woodpecker (*Picoides villosus*), starling (*Sturnus vulgaris*), Virginia opossum (*Didelphis virginiana*), raccoon (*Procyon lotor*), and western garter snake (*Thamnophis ordinoides*). This list is not meant to be all-inclusive and may omit species that currently utilize or could utilize the site.

☐ Number: 1 Author: Heather Subject: Rectangle Date: 4/27/12 12:25:30 PM

The biologist observed the wrong area--as was pointed out in the hearings of 2007 and was then acknowledged.

The western red cedar, red alder and salal described are on property owned by Edmonds and is now part of Hickman Park.

This area is habitat for a resident pair of pileated woodpeckers.

☐ Number: 2 Author: Heather Marks Subject: Rectangle Date: 8/20/07 10:12:47 PM

It IS a wildlife corridor. Even fencerows are being restored because they are wildlife corridors.

USE OF THIS REPORT

This Wildlife Study is supplied to Burnstead Construction as a means of describing wildlife habitat, as required by the City of Edmonds during the permitting process. This report is based largely on readily observable conditions and to a lesser extent, on readily ascertainable conditions. No attempt has been made to determine hidden or concealed conditions. Reports may be adversely affected due to the physical condition of the site and the difficulty of access, which may lead to observation or probing difficulties.

The laws applicable to wildlife are subject to varying interpretations and may be changed at any time by the courts or legislative bodies. This report is intended to provide information deemed relevant in the applicant's attempt to comply with the laws now in effect.

The work for this report has conformed to the standard of care employed by wildlife biologists. No other representation or warranty is made concerning the work or this report and any implied representation or warranty is disclaimed.

Wetland Resources, Inc.



Jason Knight
Wildlife Biologist

☒ Number: 1 Author: Heather Subject: Line Date: 2/6/12 3:58:10 PM -08'00'
find out for certain--readily?

☐ Number: 2 Author: Heather Subject: Rectangle Date: 2/6/12 4:01:11 PM -08'00'
It did not conform to standards. As documented in the 2007 hearing, biologist observed in wrong area--wooded area north of the playfield.

REFERENCES

Elbroch, Mark. 2001. Bird tracks and sign: a guide to North American species. Stackpole books, Mechanicsburg, PA.

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Johnson, R.E., and K.M. Cassidy. 1997. Terrestrial mammals of Washington State: Location data and predicted distributions. Volume 3 in Washington State Gap Analysis - Final Report (K.M. Cassidy, C.E. Grue, M.R. Smith, and K.M. Dvornich, eds.). Washington Cooperative Fish and Wildlife Research Unit, University of Washington, Seattle.

Peterson, R.T. 1990. Peterson field guide to western birds. Houghton Mifflin Company, New York, NY.

Pojar, Jim. 1994. Plants of the Pacific Northwest coast. Lone Pine Publishing, Renton, WA.

City of Edmonds, Environmentally Critical Areas Ordinance. Chapter 23. Edmonds, Washington. September 2004.

Stebbins, Robert. 1966. Peterson field guide to western reptiles and amphibians. Houghton Mifflin Company, Boston, MA.

APR 27 2012

EXHIBIT 1
 # 3

Remand Hearing for Old Woodway Elementary PRD
 by Burnstead Construction
 Documentation of Fish & Wildlife Habitat Conservation Area protection DEVELOPMENT SERVICES
 Edmonds, WA
 Aug. 31, 2007
 Submitted by Heather Marks, MSW

The wildlife study prepared by Wetlands Resources, Inc. (Jason Knight) for the Burnstead Construction project is superficial, making statements which are not and cannot be substantiated, leading to faulty assumptions**. I have the following comments on the report and the proposal in general:

1. In the City of Edmonds Municipal Code, the forested portion of the site qualifies as a Fish and Wildlife Habitat Conservation Area (FWHCA) under § 23.90.010.A.3 because it meets the WDFW definition of a priority habitat (Urban Natural Open Space) and § 23.90.010.A.10 (Urban Open Space and Land Useful or Essential for Preserving Connections Between habitat). If the forested area is part of a pileated woodpeckers breeding area or a band-tailed pigeon breeding or regular use area it would provide habitat for priority species, and therefore, qualifies as a FWHCA, whether formally identified or not (Edmonds Municipal Code § 23.90.010.B). The report ignores §23.90.010.A.4 *"Habits and Species of Local Importance."*

2. The wildlife study does not include a discussion of the Edmonds FWHCA definitions referenced in paragraph 1.

3. The methods section of the wildlife study does not state the date or time of day of the site visit.

- Depending on the species of interest, the season and time of day of the survey can greatly influence the species detected. Wildlife surveys generally can only establish species presence, through observation of individuals or sign, and do not conclusively establish that a species is not present without an intensive study. "Absence of evidence does not establish evidence of absence".
- The wildlife study does not provide information to determine whether the field survey was done at a time when there would be a high likelihood of detecting priority species, were they present.
- Official government wildlife studies usually last at least two years to cover all seasons and consider abnormal seasonal conditions and other factors (such as construction or demolition in the area).
- References should be annotated.
- Only those references the report cites should be listed. For example, the report does not mention scat, animal prints, etc. but those references are listed.

4. Page 2 of the wildlife study assesses the overall habitat value of the entire site, concluding that the site has low habitat value due to the sports fields and surrounding residential development. It does acknowledge that the forested portion of the site may provide some habitat for passerines (songbirds) and connects to other off-site forest habitat. However, the wildlife study concludes that the forest stand on this site is too narrow to serve as a wildlife corridor for many wildlife species. Narrow though the forest stand may be, it is rich vertically and horizontally with crucial habitat elements for the pileated woodpecker and other species. providing habitat connectivity and diversity that meets the FWHCA definition under Edmonds

B. All areas within the city of Edmonds *meeting one or more of these criteria, regardless of any formal identification*, are hereby designated critical areas and are subject to the provisions of this title and shall be managed consistent with the best available science, such as the Washington Department of Fish and Wildlife's Management Recommendations for Priority Habitat and Species.

5. The report completely ignores §23.90.010.A.4 “Habits and Species of Local Importance:

Habitats and species of local importance are those identified by the city of Edmonds, including but not limited to those habitats and species that, due to their population status or sensitivity to habitat manipulation, warrant protection. Habitats may include a seasonal range or habitat element with which a species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.”

Part II. Additional Report Requirements: Special study and report requirements – Fish and wildlife habitat conservation areas 23.90.020.C.2.

Identification of any species of local importance, priority species, or endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area, and assessment of potential project impacts to the use of the site by the species.

When I requested a list from Edmonds, “I'd like to get a list of the city's ‘Species of Local Importance.’” I was referred to “Per ECDC 23.90.010A2b Dept. of Fish & Wildlife maintains the current

listing, there is also periodic updates to WAC. 232-12-014 Endangered and 232-12-011 Threatened.” (email reply from City of Edmonds Aug. 30. 2007).

23.90.020.C.3. A discussion of any federal, state, or local special management recommendations, including Washington Department of Fish and Wildlife habitat management recommendations, that have been developed for species or habitats located on or adjacent to the project area.

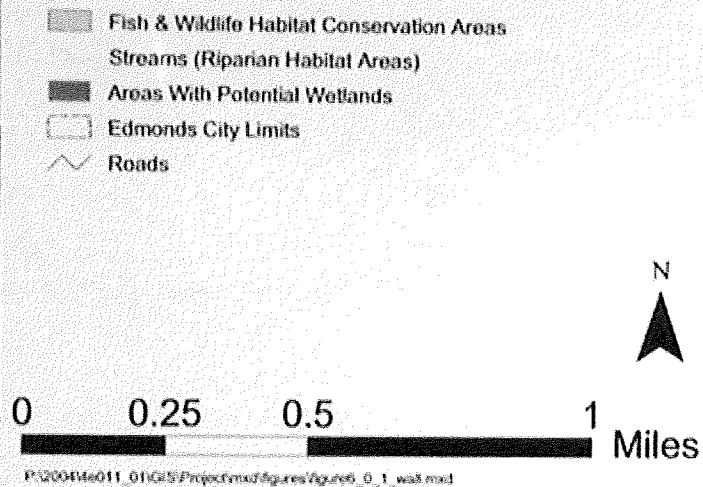
Part III. Development Standards – Fish and Wildlife Habitat Conservation Areas
23.90.030 Development standards – General requirements.

A.1. No development shall be allowed within a fish and wildlife habitat conservation area or buffer with which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by the Washington Department of Fish and Wildlife or applicable state or federal agency.

2. “...Approval for alteration of land adjacent to the fish and wildlife habitat conservation area or its buffer shall not occur prior to consultation with the Washington Department of Fish and Wildlife for animal species, the Washington State Department of Natural Resources for plant species, and other appropriate federal or state agencies.”

**City of Edmonds
Environmentally Critical Areas
Draft Inventory Maps**

**Figure 7.0-1 Potential Fish & Wildlife Habitat
Conservation Areas**





Pileated Woodpecker

January 2005

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

Management Recommendations for Washington's Priority Species

FOR USE TO GUIDE SITE SPECIFIC MANAGEMENT OF PRIORITY SPECIES

Pileated Woodpecker (*Dryocopus pileatus*)

Washington Department of Fish and Wildlife's (WDFW) *Management Recommendations for*

Washington's Priority Species. This abbreviated version of a chapter in *Management Recommendations for Washington's Priority Species: Volume IV* (see http://wdfw.wa.gov/hab/phs/vol4/phs_vol4_birds.pdf) has been streamlined for easier application. Where applicable, these recommendations should be put into practice consistently across a landscape to be most effective. The following recommendations are not site-specific. Where available, a professional in a relevant field (e.g., wildlife biologist) should evaluate the site and surrounding landscape when applying these recommendations. Attach parcel map with species location indicated if available.

General Recommendations

- Management should be conducted within use areas (home ranges) of pileated woodpeckers.
- Maintain large standing dead trees (snags) and large decaying live trees for nesting and roosting within home ranges.
- Retain large naturally formed stumps and numerous large logs in various stages of decay to improve foraging habitat within home ranges.
- Use average size standards (rather than minimums) for managing pileated woodpecker habitat (e.g., If > 5 snags/acre is recommended, that does not imply that a landowner retain exactly 5 snags on every acre. In this instance, variability in the number of snags from acre-to-acre is preferred).
- A variety of snag creation techniques are available and such techniques can produce suitable snags for pileated woodpeckers in older second growth forests (e.g., removal of tree-top, girdling). Western Washington
- Estimated nesting/breeding home ranges average 1480 ac surrounding nests west of the Cascades. Larger home ranges are estimated at just over 2100 ac on the Olympic Peninsula.
- Maintain coniferous forests (stands with >70% conifer trees) of about 60 years of age or older at >70% canopy cover. Manage these forests for an average of 2 snags/10 ac that are 30'' in diameter.
- Retain an average of 7 snags/ac >90' in height with diameters ranging between 61-122'' in forests used consisting entirely of trees at the minimum recommended diameter).
- In addition to snags retained for nesting and roosting, retain an average of 12 snags/ac as foraging trees in the following size classes:

Size class (diameter) Snags retained

10-20'' > 7/ac

20-30 in'' > 3/ac

> 30'' > 2/ac



Pileated Woodpecker markings made as I watched.



Close up of marking



Possible nesting site

Urban/Suburban Areas

- Some of the above recommendations may not be possible due to the availability of trees, snags, and habitat on a proposed development in urban/suburban areas. Where habitat and tree availability is sufficient, follow the western/eastern Washington guidelines above. Where availability is insufficient we recommend the following guidelines:

- 4 Target larger forest patches with large trees and snags for conservation during the planning process.

- 4 Retain forest in the largest patches available (>74 ac would be considered large). Where large patches are unavailable, smaller patches should be retained; the average size of smaller patches should be no less

- than approximately 7 ac. This acreage could be attained through cumulative retention by various adjacent landowners within an urban landscape.

- 4 Retain or create snags as well as retain live trees in the largest size classes available in the stand.

References:

***WILDLIFE STUDY**

BURNSTEAD – WOODWAY ELEMENTARY

WETLAND RESOURCES, INC. PROJECT #06547, Jason Knight, biologist

****Pamela Erstad, PHS/GMA Biologist**

Washington Department of Fish and Wildlife

16018 Mill Creek Blvd

Mill Creek, Washington 98012

Phone: 425.379.2308

Fax: 425.379.2323

E-mail: erstapke@dfw.wa.gov

Washington Department of Fish and Wildlife documents available from their website:

<http://wdfw.wa.gov/>

[openspac.pdf](#)

[pileated_woodpker-1.pdf](#)

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[WDFW -- Backyard Wildlife Sanctuary Program.html](#)